

December 6, 2006

In Re: Patricia Haughton v. Hill Laboratories, Inc.  
Civil Action No.: 06-11217-RGS

## **AFFIDAVIT**

I, Ben Tariri, Plaintiff's Attorney in this matter, hereby state and depose as follows:

- 1) I am submitting this affidavit in support of Plaintiff's motion to set aside a Default, ordered by this Honorable Court on Nov. 27, 2006 when I was not present at the Rule 16.1 Scheduling Conference (the "Conference").
- 2) As a way of background, initially, the Conference was scheduled for November 13, 2006. Please see "Notice of Scheduling Conference," Court Document No. **8**, attached as **Exhibit A**.
- 3) It is the practice in my office to open an emailed document and then save and print the document. I promptly did so when I received the first notice (Exhibit A) on that day. I also notated the date on my calendar.
- 4) On Oct. 25, 2006, at the end of the day, as I was hastily scanning through my electronic mail messages, I noticed that I had received a notice from this Honorable Court.
- 5) In this instance, the document, which was a notice of rescheduling the Conference to Nov. 27 was indeed in the body of the email message itself, not as a separate document, which is ordinarily the case. Please see **Exhibit B**.
- 6) For some unexplained reason, I glanced over the emailed message for literally two seconds before closing it. As a result, unfortunately, I did not save or print the email. I did, however, immediately cross out the initial date from my calendar book, which was in front of me on my desk. Other than that, my memory completely lapsed concerning that date.
- 7) As the result, I did not notate the new date in my calendar, as I always do, and instead, I continued to schedule meetings with my clients as usual.

- 8) This has never happened to me before, as I am quite conscious of the grave importance of court hearings, especially in this courthouse. In fact, I have never failed to appear in any court hearing of any nature, be it state, municipal, or Federal. I am truly baffled by this oversight.
- 9) At 4:10 PM on the day of the Conference, when Ms. Schaffer, the Defendant's counsel called my office, unaware of the hearing, I was in the midst of a very heated discussion with two of my clients over a highly emotionally-charged legal matter.
- 10) When my secretary answered the telephone, in response to Ms. Schaffer's inquiry, she checked the calendar and emphatically responded that there was nothing scheduled as far as court appearances were concerned. She then passed the message on to me in the meeting room.
- 11) By the time I received the message that Ms. Schaffer had called, it was about 4:15 PM, a few minutes later. I immediately sprang into action by picking up the telephone and calling the Court Clerk, asking to speak with Ms. Mary Johnson, the Deputy Clerk. I was told that she was in court and that they could not reach her in court. I left a message with Ms. Mary Johnson at about 4:15 PM on that day, while the Court was still in session. In my message I tried to explain my predicament, but there was no way to convey this message directly to the Court.
- 12) I am baffled by my memory lapse, and by my failure to write down the new date.
- 13) It is certainly understandable that an attorney does not have to incur expenses to come to court twice for the same hearing. Therefore, if ordered, I will pay whatever reasonable costs associated with my oversight.
- 14) I am also mindful that the time of this Court is highly valuable and I apologize for this unfortunate incident.
- 15) This case is of utmost importance to my client, who has suffered physical injuries, and therefore, I am asking the Court to respectfully set aside the Default.
- 16) Lastly, I will agree, and the opposing counsel does not object, if the Court adopts the terms of the Joint Statement, already filed with the Court.

Signed under the pains and penalties of perjury, this 6<sup>th</sup> day of December, 2006.

Ben Tariri, \_\_\_\_\_